

ACLU of Hawaii Foundation
JONGWOOK "WOOKIE" KIM
11020
EMILY HILLS 11208
P.O. Box 3410
Honolulu, HI 96801
T: (808) 522-5905
F: (808) 522-5909
tbrack@acluhawaii.org
wkim@acluhawaii.org

American Civil Liberties Union Foundation
LORIE CHAITEN*
1640 North Sedgwick Street
Chicago, IL 60614
T: (212) 549-2633
F: (212) 549-2650
lchaiten@aclu.org

Arnold & Porter Kaye Scholer LLP
JOHN A. FREEDMAN*
601 Massachusetts Ave., NW
Washington, DC 20001
T: (202) 942-5000
F: (202) 942-5999
john.freedman@arnoldporter.com

American Civil Liberties Union Foundation
JULIA KAYE*
JENNIFER DALVEN*
WHITNEY WHITE*
JOHANNA ZACARIAS*
125 Broad Street, 18th Floor
New York, NY 10004
T: (212) 549-2633
F: (212) 549-2650
jkaye@aclu.org
jdalven@aclu.org
wwhite@aclu.org
jzacarias@aclu.org

RACHEL REEVES*
American Civil Liberties Union Foundation
915 15th Street NW
Washington, DC 20005
T: (212) 549-2633
F: (212) 549-2650
rreeves@aclu.org

**admitted pro hac vice*
Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I**

HEIDI PURCELL, M.D., *et al.*,

Plaintiffs,

v.

ROBERT F. KENNEDY, JR., *et al.*,
Defendants.

CIVIL ACTION

Case No. 1:17-cv-00493-JAO-RT

**PLAINTIFFS' REPLY
BRIEF IN SUPPORT
OF THE COURT
RETAINING
JURISDICTION**

Defendants concede that this Court has discretion to retain jurisdiction during the agency remand. Defs.’ Br. at 2. They cannot contest, *see id.* at 2-3, the diversity of fact patterns in which other courts, considering the circumstances holistically, have chosen to exercise such equitable power to preserve judicial resources, prevent prejudice, and ensure “any further review would be expedited,” *Nat’l Ass’n of Regul. Util. Comm’rs v. U.S. Dep’t of Energy*, 680 F.3d 819, 826 (D.C. Cir. 2012). Nor do they dispute that this Court’s authoritative knowledge of the REMS statute, mifepristone, and the medication’s multi-decade regulatory history, developed while presiding over this case for more than seven years, positions the Court well to review any necessary challenge to FDA’s post-remand action. Pls.’ Br. at 5.

Instead, Defendants misconstrue *Heartland Regional Medical Center v. Leavitt*, 415 F.3d 24, 30 (D.C. Cir. 2005), as holding that any challenge to an agency’s post-remand action “must be raised in a ‘separate APA action.’” Defs.’ Br. at 4. That is wrong. *Heartland* held only that, because the defendant agency *had* complied with the original judgment, *id.* at 33 (“What the judgment did require was what *Heartland* received—HHS’s reconsideration of alternatives to the . . . definition of ‘urban area’”), any relief from the agency’s post-remand decision could not come “through a motion to enforce the *Heartland I* judgment itself,” *id.* But *Heartland* cast no doubt on a court’s authority to retain jurisdiction during a remand and then provide further relief, within the same litigation, if the agency does

not fully comply with the court’s order. Indeed, that is precisely what happened in *National Association of Regulatory Utility Commissioners v. U.S. Department of Energy*, a later D.C. Circuit case. 736 F.3d 517 (D.C. Cir. 2013). There, one year after the Court “retained jurisdiction to expedite any further review,” it found that “[o]n remand the Department has again declined to reach the statutorily required determination,” despite curing other defects identified in the order. *Id.* at 518-20.

Defendants’ argument that, if further litigation is necessary, Plaintiffs can just file a new case and mark it as related, Defs.’ Br. at 5, ignores the concrete burdens and delays inherent in that course, including new civil filing fees, formal service of process, and a separate related-case process that can delay judicial reassignment. *E.g.*, Schedule of Fees & Online Payments, U.S. District Court, District of Hawaii, <https://www.hid.uscourts.gov/court-resources/schedule-of-fees> (\$405 civil filing fee); Fed. R. Civ. Pro. 4(i) (service of process); LR40.2 (seven days to object to Notice of Related Case). Defendants cannot rebut that the *most* efficient procedural mechanism is to retain jurisdiction.

For the reasons previously stated, this Court should exercise its equitable discretion to retain jurisdiction while FDA reviews the mifepristone REMS for the third time since Plaintiffs began their advocacy against it. Pls.’ Br. at 4. Plaintiffs respectfully request that the Court administratively close the case while retaining jurisdiction during the agency remand.

DATED: January 12, 2026

Respectfully submitted,

/s/ Emily Hills

EMILY HILLS 11208
JONGWOOK "WOOKIE" KIM
11020
ACLU of Hawaii Foundation
P.O. Box 3410
Honolulu, HI 96801
T: (808) 522-5905
F: (808) 522-5909
ehills@acluhawaii.org
wkim@acluhawaii.org

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11020
EMILY HILLS 11208
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HEIDI PURCELL, M.D., FACOG,
et al.

Plaintiffs,

v.

DORIS FINK, J.D., *in her*
official capacity as ACTING
SECRETARY,
U.S. D.H.H.S., et al.,

Defendants.

CIVIL ACTION

Case No. 1:17-cv-00493-JAO-RT

CERTIFICATE OF SERVICE

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The undersigned hereby certifies that on January 12, 2026, a true and correct copy of the foregoing document was electronically transmitted to the Clerk's Office using the CM/ECF System, which will notify all counsel of record of such filing.

DATED: Honolulu, Hawai'i, January 12, 2026.

/s/ Emily Hills

EMILY HILLS 11208
JONGWOOK "WOOKIE" KIM
11020
ACLU of Hawai'i Foundation
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